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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,240	11/25/2003	Roger A. Duman	G180.147.101 / GMI6164	6664

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EXAMINER	
DEVORE, PETER T	

ART UNIT	PAPER NUMBER
3751	

DATE MAILED: 02/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/722,240	DUMAN, ROGER A.	
	Examiner	Art Unit	
	Peter T. deVore	3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 December 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-49* is/are pending in the application.

4a) Of the above claim(s) *10,30 and 47* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-9,11-29,31-46,48 and 49* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Claims 10, 30, and 47 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 1/10/05.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-9, 11-18, 20-24, 26-29, 31-35, 40-42, 44-46, 48, and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carter in view of Hellberg.

The Carter reference discloses a container filling system comprising a container loading station (see col. 5, lines 9-11), a container filling station (machine centered at N), and a drive system comprising a multiplicity of carrier plates E, but does not disclose a mounting piece (with a base and a shoulder/reversed frustoconical portion) on the carrier plate engaging a longitudinal recess on the container. However, the Hellberg reference discloses a system for mounting a container having an internal stop surface (the inner wall of hollow stem 24) on a carrier plate 10 including a mounting piece 22 (with a base and shoulder/reversed frustoconical portion, see Figure 3) for reliable

releasable securement of the container to the carrier plate. It would have been obvious to employ containers having internal stop surfaces and mounting pieces each having a base and a shoulder/reversed frustoconical portion on the carrier plates of the Carter device in view of Helberg for reliable releasable securement of the containers to the carrier plates. Regarding claims 32 and 35, although Hellberg remains silent as to the height of the base and shoulder, it would have been obvious to make the base and shoulder of the modified Carter device to have heights in the claimed range, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum workable ranges involves only routine skill in the art. In Re Aller, 105 USPQ 2336. Regarding claim 42, although Carter remains silent as to the product dispensed, the Examiner takes Official Notice that yogurt containers are but one of many consumer liquid containers that are mass-produced by filling machines such as the Carter filling machine. Therefore, it would have been obvious to select production of yogurt containers with the modified Carter device, as the modified Carter device would work equally well to produce any of the known mass-produced liquid containers. Regarding claims 1-9, 11-18, and 20-24, the claimed methods are inherently performed during the normal use of the modified Carter device.

Claims 19, 38, and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carter in view of Hellberg as applied to claims 1 and 26 above, and further in view of Rutland.

The Carter reference discloses a container filling system as discussed supra, but does not disclose a multiplicity of mounting pieces per carrier plate. However, the

Rutland reference discloses a carrier plate 10 having a multiplicity of mounting pieces 16 for more efficient movement of containers via each carrier plate. It would have been obvious to employ a multiplicity of mounting pieces per carrier plate of the modified Carter device in view of Rutland for more efficient movement of containers via each carrier plate. Regarding claim 19, the claimed method is inherently performed during the normal use of the modified Carter device.

Claims 25 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carter in view of Hellberg as applied to claims 21 and 26 above, and further in view of Gibble.

The Carter reference discloses a container filling system as discussed supra, but does not disclose a covering station. However, the Gibble reference discloses a similar filling system including wherein the drive device takes the filled containers to covering station 20 for convenient covering of the containers after filling. It would have been obvious to modify the modified Carter to device so that the drive device takes filled containers to a covering station for convenient covering of the containers after filling. Regarding claim 25, the claimed method is inherently performed during the normal use of the modified Carter device.

Claims 36 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carter in view of Hellberg as applied to claim 33 above, and further in view of Sorenson.

The Carter reference discloses a container filling system as discussed supra, but does not disclose that the base and shoulder are rings having coaxial passages and

forming an aperture However, the Carter reference discloses a carrier plate (Figures 9 and 10) wherein the mounting piece forms a ring having a central aperture (see Figure 10) for greater surface area/friction between the container and carrier plate. It would have been obvious to modify the modified Carter to device so that the base and shoulder are rings having coaxial passages which form an aperture in view of Sorenson for greater surface area/friction between the container and carrier plate.

Response to Arguments

Applicant's arguments filed 12/9/05 have been fully considered but they are not persuasive. Applicant argues that the Carter device is designed such that the containers are mounted to their carrier plates by sliding them over flat surfaces, and this precludes a modification of the carrier plates to have the mounting piece taught by Hellberg. However, it is the Examiner's position that one of ordinary skill would be able to make such a modification. Applicant next argues that the stationary system of Hellberg is non-analogous to the moving system of Carter. However, it is the Examiner's position that it is the interaction between the container and the surface that is the relevant art in the two references for determining if the art is analogous, and the motility or lack thereof of the surface in each case does not render the references non-analogous. Applicant next argues that motivation to combine the references is lacking; however, motivation to make the modification is provided by the more secure mounting arrangement taught by Hellberg.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter T. deVore whose telephone number is (571) 272-4884. The examiner can normally be reached on Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Pd Pd

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2/6/06